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In the Supreme Court of the United States

RONALD D. EDWARDS, WARDEN,
Petitioner,
v.
ROBERT W. CARPENTER,
Respondent.

On Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit

BRIEF OF *AMICI CURIAE* STATES OF TEXAS, ALABAMA, ALASKA, ARKANSAS, ARIZONA, CALIFORNIA, COLORADO, CONNECTICUT, DELAWARE, FLORIDA, GEORGIA, ILLINOIS, INDIANA, IOWA, KANSAS, LOUISIANA, MARYLAND, MINNESOTA, MISSISSIPPI, MISSOURI, MONTANA, NEBRASKA, NEVADA, NEW HAMPSHIRE, NEW JERSEY, NEW MEXICO, OKLAHOMA, SOUTH CAROLINA, SOUTH DAKOTA, TENNESSEE, UTAH, VERMONT, WASHINGTON, WEST VIRGINIA AND WISCONSIN IN SUPPORT OF PETITIONER

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STATEMENT OF *AMICI CURIAE* INTEREST

Texas, and the 34 other states that join in this brief, urge the Court to reverse the decision of the Sixth Circuit in *Carpenter v. Mohr*, 163 F.3d 938, 945-46 (CA6 1998), *cert. granted sub nom. Edwards v. Carpenter*, 120 S.Ct. 444 (U.S. Nov. 8, 1999) (No. 98-2060). This case presents an important question affecting the states' interest in the finality of state criminal convictions. At issue is whether a federal court reviewing a writ of habeas corpus is barred from considering an ineffective assistance of counsel claim as "cause" for the procedural default of another claim when the ineffective assistance claim itself is procedurally defaulted.

The Sixth Circuit's decision overlooks long-settled precedent requiring that it conduct a "cause" and "prejudice" analysis on the defaulted ineffective assistance claim before using the ineffective assistance of counsel claim as "cause" for another procedurally defaulted claim. Its argument that the Supreme Court was merely concerned with exhaustion of an ineffective assistance of counsel claim before it could serve as "cause" for a procedurally defaulted independent issue misinterprets the Court's precedent regarding procedural bars in federal court.

Because the court of appeals has effectively ruled that procedurally defaulted ineffective assistance of counsel claims will be resurrected in federal court to serve as "cause" for other procedurally defaulted claims, a petitioner can knowingly choose to default claims in state

court in hopes that a federal court will accord more favorable review of his federal claims. This creates a risk of forum-shopping for constitutional claims, undermines the states' legitimate interests in having the first opportunity to right their mistakes, and thus offends state sovereignty.

The Sixth Circuit's decision undercuts long-standing principles of comity. If left standing, the court of appeals's opinion opens the doors to a flood of federal habeas litigation. Based on this decision, habeas petitioners can return to state court and file abusive state writs alleging a laundry list of ineffective assistance of counsel claims and bootstrap those claims to other claims that have already been procedurally defaulted.

One of the purposes of the procedural default doctrine is to acknowledge the binding nature of state rules of procedure that preclude independent review by federal courts. *Wainwright v. Sykes*, 433 U.S. 72, 90-91 (1977). In addressing a claim that has been procedurally defaulted in state court, a federal court shows a complete disregard for state procedural rules. Repeatedly, the Court has "emphasized the important interests served by state procedural rules at every stage of the judicial process and the harm to the states that results when federal courts ignore these rules." *Coleman v. Thompson*, 501 U.S. 722, 749 (1991). Indeed, the Court has recognized that "[a] State's procedural rules serve vital purposes at trial, on appeal, and on state collateral attack." *Murray v. Carrier*, 477 U.S. 478, 490 (1986). *Amici* have a strong interest in ensuring that their procedural rules are accorded proper deference by federal courts.

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Amici file this brief because this case presents an issue of importance to the states. The Sixth Circuit's decision makes the states highly susceptible to a new flow of federal habeas litigation, reopening claims that are barred. The Court should reverse because allowing habeas corpus petitioners to revive procedurally defaulted claims with another procedurally defaulted claim violates principles of state sovereignty.

SUMMARY OF THE ARGUMENT

A federal court reviewing a state prisoner's habeas corpus petition must respect a state court's determination that a particular claim is procedurally barred under state law. *Wainwright*, 433 U.S. at 90-91. When the state court has "clearly and expressly" stated that its judgment rests on a state procedural bar, a presumption arises that the state court decision rests on independent and adequate state law grounds. *Harris v. Reed*, 489 U.S. 255, 263 (1989). The purpose behind the independent and adequate state law doctrine is "to accord appropriate respect to the sovereignty of the [s]tates in our federal system." *County Court of Ulster County, New York v. Allen*, 442 U.S. 140, 154 (1979). Consequently, a federal court's disregard for a state procedural default greatly taxes the states because it: 1) improperly threatens the finality of criminal convictions; and 2) frustrates the states' good faith efforts to honor constitutional rights and their sovereign power to punish criminal offenders. *Murray*, 477 U.S. at 487; *Coleman*, 501 U.S. at 748. Because the Sixth Circuit's decision violates the fundamental principles of federalism, it should be reversed.

ARGUMENT

I. THE PROCEDURAL DEFAULT DOCTRINE IS FOUNDED ON PRINCIPLES OF COMITY AND FEDERALISM.

The Sixth Circuit's conclusion that "[p]rinciples of comity do not require placing a procedural default analysis on claims asserted as cause" misinterprets this Court's procedural default jurisprudence. It is true that the doctrines of exhaustion and procedural default are distinct, but they share a common foundation of long-standing principles of federalism. *Murray*, 477 U.S. at 495 ("[T]he principles of comity and finality . . . inform the concepts of cause and prejudice."); *see also Wainwright*, 433 U.S. at 81 ("[I]t is a well-established principle of federalism that a state decision resting on an adequate foundation of state substantive law is immune from review in the federal courts."); *Coleman*, 501 U.S. at 731 ("[T]his exhaustion requirement is also grounded in principles of comity."); *Picard v. Connor*, 404 U.S. 270, 275 (1971) ("Comity is the underlying rationale for the exhaustion requirement.").

The court of appeals wrongly concluded that merely imposing the exhaustion requirement on claims asserted as "cause" for a procedural default sufficiently ensures that the state court has had the first opportunity to review the claims. *Carpenter*, 163 F.3d at 945. In fact, a claim that is procedurally defaulted is not reviewed on the merits by the state courts. This Court explicitly founded the procedural default doctrine on principles of comity and federalism. *Coleman*, 501 U.S. at 730. *Harris* explicitly established the adequate and independent state ground

doctrine to demonstrate respect for state procedural rules. 489 U.S. at 264. Like a petitioner who has failed to exhaust state court remedies, a petitioner who has procedurally defaulted his claims in state court has deprived the state of the opportunity to review those claims. *Coleman*, 501 U.S. at 732.

The doctrine of exhaustion is a statutory prerequisite to obtaining federal habeas review of a constitutional claim. 28 U.S.C. §2254(b) (1999). Similarly, the doctrine of procedural default is a common-law condition precedent to federal habeas review. *Murray*, 477 U.S. at 517 (Brennan, J., dissenting); *see also Harris*, 489 U.S. at 259. These two requirements must be independently met before a federal court will review a federal claim that was first presented to the state courts. Consequently, the Sixth Circuit was wrong in holding that "[t]here is no additional requirement beyond exhaustion in order for a petitioner to utilize ineffective assistance of appellate counsel as cause for the procedural default of an independent claim." *Carpenter*, 163 F.3d at 945. Federalism concerns demand that a federal court abstain from reviewing a claim when the state court relied on a procedural bar for dismissing the same claim. *Coleman*, 501 U.S. at 729-30.

II. THE PROCEDURAL DEFAULT DOCTRINE DICTATES A "CAUSE AND PREJUDICE" ANALYSIS ON ALL CLAIMS PROCEDURALLY DEFAULTED IN STATE COURT.

A procedural default occurs when a criminal defendant fails to comply with a state procedural rule. *Wainwright*, 433 U.S. at 82-84. Generally, a state court

will not review the merits of a procedurally defaulted claim, and a federal court is likewise barred from addressing the merits of the claim. *Id.* In finding that a habeas petitioner can use a procedurally defaulted ineffective assistance of counsel claim as cause for the procedural default of another claim, the court of appeals erroneously opened the federal courthouse doors to state prisoners with defaulted claims. This Court's decisions in *Wainwright*, *Murray*, *Harris*, and *Coleman* compel a cause and prejudice analysis on a procedurally defaulted ineffective assistance of counsel claim before it can serve as "cause" for another procedurally defaulted claim.

In *Wainwright*, the Court held that to obtain federal habeas review of a constitutional claim that has been procedurally defaulted under state rules, a petitioner must show cause for the default and resultant prejudice. 433 U.S. at 87. The Court explicitly left open the question of the "precise definition of the 'cause'-and-'prejudice' standard." *Id.* at 87-91. This open question was revisited in *Murray*.

In *Murray*, the habeas petitioner, Carrier, procedurally defaulted his claim that the trial court erred in denying his discovery request for the victim's statements because he failed to present the issue on direct appeal. 477 U.S. at 482-83. Carrier raised the discovery claim for the first time in his *pro se* state habeas petition. The state trial court dismissed the claim based on the procedural default, and the Virginia Supreme Court denied certiorari. Carrier raised the issue in his federal petition, which the federal district court dismissed as procedurally barred. On appeal,

Carrier argued that counsel had mistakenly omitted the claim on direct appeal and that this error was "cause" for the procedural default. The court of appeals reversed and remanded, holding that a petitioner need only show that a procedural default was due to counsel's "ignorance or inadvertence rather than from a deliberate tactical decision." This Court decided that the court of appeals's standard was incorrect.

Carrier asked the Court to establish a lesser standard of counsel error, *i.e.*, mistake or inadvertence, to serve as "cause" for a procedural default on appeal. *Id.* at 490. The Court flatly rejected that proposition and held that only constitutionally deficient performance could constitute cause for a procedural default. *Id.* at 492. The Court held that constitutionally ineffective assistance of counsel as established in *Strickland v. Washington*, 466 U.S. 668 (1984), can serve as "cause" for a procedural default of another claim if the ineffective assistance of counsel claim was independently raised in state court. *Murray*, 477 U.S. at 488-89.

Carrier had not raised an independent claim of ineffective assistance of counsel in state court. In fact, the Court found that Carrier "disavowed any claim that counsel's performance on appeal was so deficient as to make out an ineffective assistance claim." *Id.* at 497. Consequently, because the Court found that Carrier was not raising an ineffective assistance of counsel claim for the default of his discovery issue, Carrier could not establish "cause" and the discovery claim was procedurally barred. *Id.*

In *Harris*, the Court found that federal habeas review of the petitioner's ineffective assistance claim was not precluded because the state appellate court, although mentioning a state procedural default, had addressed the substantive merits in rejecting the claim. 489 U.S. at 266. The Court held that "[a] procedural default does not bar consideration of a federal claim on either direct or habeas review unless the last state court rendering a judgment in the case 'clearly and expressly' states that its judgment rests on a state procedural bar." *Id.* at 263. In other words, *Harris* established a presumption against an adequate and independent state law ground to support the state's decision when the last state court fails to explicitly state its reliance on a procedural default.

In *Coleman*, the petitioner filed an untimely notice of appeal from the state habeas court's adverse ruling. 501 U.S. at 727. The state moved to dismiss the appeal on the ground that the notice of appeal had not been filed within the time prescribed by a state procedural rule. *Id.* at 727-28. "Upon consideration" of the state's motion to dismiss and other pleadings filed, the state supreme court dismissed the appeal. *Id.* Because the state's motion to dismiss was based solely upon the state's procedural rule, this Court found that the state supreme court's dismissal appeared to rest primarily on state law. *Id.* at 740-44. Thus, the *Harris* presumption against adequate and independent state grounds did not apply and the federal habeas court was barred from reviewing the claims presented in the state habeas proceeding. *Id.* at 729-30, 740-44.

Here, however, the Sixth Circuit disregarded the state's procedural rules. Under the court of appeals's opinion, a defaulted ineffective assistance of counsel claim can be resurrected in federal court by serving as "cause" for other independently procedurally defaulted claims. Acceptance of the Sixth Circuit's interpretation of *Murray* would subvert the important interests of finality, comity, and federalism underlying the Court's procedural default jurisprudence.

The Sixth Circuit's interpretation of this Court's precedent is unfounded. The court of appeals concluded that *Murray* was merely concerned with exhaustion of an ineffective assistance of counsel claim before it could serve as "cause" for another procedurally defaulted claim. *Carpenter*, 163 F.3d at 944. While it is true that *Murray* stated that an ineffective assistance of counsel claim would need to be presented as an independent claim to the state courts before it could serve as "cause" for a separate procedurally defaulted claim, the Court did not decide whether a procedurally defaulted ineffective assistance of counsel claim could serve as "cause." 477 U.S. at 489. Indeed, in *Murray*, the petitioner was not even alleging an ineffective assistance of counsel claim. 477 U.S. at 483, 497. *Murray* cannot be interpreted in a vacuum. It must be considered in conjunction with the Court's other procedural default cases, *i.e.*, *Wainwright*, *Harris*, and *Coleman*.

The Sixth Circuit held that *Murray* did not impose a procedural default requirement for claims asserted as "cause," and thus, refused to apply a cause and prejudice

analysis on the defaulted ineffective assistance of counsel claim. The court of appeals's reasoning ignores the states' legitimate interest in the finality of their convictions and undermines the states' right to punish criminal defendants. *Coleman*, 501 U.S. at 748. Although *Wainwright*, *Harris*, and *Coleman*, did not directly address whether a procedurally defaulted ineffective assistance of counsel claim can serve as "cause" for another defaulted constitutional claim, the Sixth Circuit's rationale is inconsistent with the Court's reasoning in those cases.[1]

III. A FEDERAL COURT CANNOT IGNORE A PROCEDURAL DEFAULT IN STATE COURT.

It is firmly established that a federal court cannot review a claim that has been explicitly ruled procedurally barred by the state's highest court considering the claim. *Harris*, 489 U.S. at 261-62; *Coleman*, 501 U.S. at 729-30. When a state court explicitly relies on a procedural bar to deny relief, a state prisoner may not obtain federal habeas

1. In a recent opinion, the Court stated that an ineffective assistance of counsel claim could not serve as "cause" for the procedural default of an Eighth Amendment claim because "the ineffective assistance of counsel [was], itself, procedurally defaulted." *Stewart v. LaGrand*, 119 S.Ct. 1018, 1021 (1999). Also, the Court indicated that the defaulted ineffective assistance claim was subject to the "cause and prejudice" standard. *Id.* Although the Court did not refer to any prior procedural default cases, the Court's reasoning in *Stewart* directly contradicts the Sixth Circuit's reasoning. The Court should remove any uncertainty as to its holding in *Stewart*, and reaffirm the independent and adequate state ground doctrine.

relief unless he can demonstrate cause for the default and actual prejudice attributable to the default, or that the federal court's failure to consider the claim will result in a miscarriage of justice. *Coleman*, 501 U.S. at 750; *Wainwright*, 433 U.S. at 87.

Murray established that when counsel is ineffective under the standard of *Strickland*, this may serve as "cause" within the meaning of *Wainwright*. 477 U.S. at 488-89. Also, *Coleman* reiterated that "counsel's ineffectiveness will constitute cause only if it is an independent constitutional violation." 501 U.S. at 755. Therefore, an ineffective assistance of counsel claim cannot serve as "cause" for the procedural default of another claim unless counsel's performance was constitutionally deficient and resulted in prejudice. *Murray*, 477 U.S. at 492. Although the Court has cautioned that an ineffective assistance of counsel claim must have first been presented to the state courts as an independent claim in order for it to serve as "cause" in a federal court proceeding, it has not explicitly answered whether a procedurally defaulted ineffective assistance of counsel claim may serve as "cause." Logically, it should not.

Before finding that an ineffective assistance of counsel claim constitutes "cause" for another procedurally defaulted claim, a federal court must find that counsel's performance was constitutionally deficient. *Coleman*, 501 U.S. at 755. When a federal court independently addresses the merits of a procedurally defaulted ineffective assistance of counsel claim, it is reviewing a claim that the state courts never addressed. The court of appeals

acknowledged that independent review of the ineffective assistance of counsel claim was barred because the claim was defaulted in state court, yet it found that *Murray* creates an exception and allows the claim to serve as "cause" for another procedurally defaulted claim. *Carpenter*, 163 F.3d at 945 ("There is no additional requirement beyond exhaustion in order for a petitioner to utilize ineffective assistance of appellate counsel as cause for the procedural default of an independent claim.").

The court of appeals's reasoning defies logic. In this case, the state court's denial of relief was based on a state procedural default. *Carpenter*, 163 F.3d at 942. By failing to satisfy state procedural requirements, Carpenter forfeited his right to review of the merits of his federal claim. The court of appeals's opinion overlooks well-established precedent requiring that it conduct a "cause" and "prejudice" analysis on Carpenter's defaulted claim before using the ineffective assistance of counsel claim as "cause" for another defaulted claim.[2]

Because Carpenter's claim was dismissed on an independent and adequate state law ground, "resolution of any independent federal ground for the decision could not affect the judgment and would therefore be advisory." *Coleman*, 501 U.S. at 729. In fact, the procedural history of this case emphasizes the fundamental wisdom of

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2. In contrast, the district court did apply a cause and prejudice analysis to the defaulted ineffective assistance of counsel claim. *Carpenter*, 163 F.3d at 943. The district court's analysis is consistent with procedural bar jurisprudence.

barring federal habeas review based on an independent and adequate state ground of decision. The state courts never addressed Carpenter's constitutional complaint of ineffective assistance of appellate counsel because he failed to raise it in a procedurally correct manner. By deciding the issue, the court of appeals decided an issue that the state courts never considered and, potentially, gave an award of relief broader than this Court could have permitted on direct review of the conviction. Those actions were inappropriate for a court bound by federalism and comity.

IV. THE PRINCIPLES OF FEDERALISM DICTATE THAT A FEDERAL COURT SHOULD RESPECT THE STATES' INTERESTS IN ENFORCEMENT OF THEIR PROCEDURAL RULES.

The Sixth Circuit's conclusion that a procedurally defaulted ineffective assistance of counsel claim can serve as "cause" for another defaulted claim adds confusion to the procedural default doctrine. On review of Carpenter's federal habeas petition, the district court applied a cause and prejudice analysis to Carpenter's defaulted ineffective assistance of counsel claim. *Carpenter*, 163 F.3d at 943-44. On appeal Carpenter successfully argued that the district court erred because *Murray* "only imposed an exhaustion requirement on the cause asserted by the habeas petitioner in connection with the procedural default of the primary habeas claim." *Carpenter*, 163 F.3d at 944.

The Sixth Circuit's decision fails to properly respect Ohio's state procedural rules. In *Reed v. Ross*, 468 U.S. 1, 10 (1984), the Court admonished federal courts to respect

a state court's finding of procedural default under its own laws:

> "The State's interest in the integrity of its rules and proceedings and the finality of its judgments . . . would be undermined if the federal courts were too free to ignore procedural forfeitures in state court." *Id.*

The Sixth Circuit's understanding of *Murray*, *i.e.*, only requiring an ineffective assistance of counsel claim to be raised independently in state court to satisfy the principles of comity, misses the point of the Court's concerns. *Carpenter*, 163 F.3d at 944. *Murray*'s concern with comity was based on giving the states the first opportunity to review and decide the merits of a constitutional claim. 477 U.S. at 489. When a claim raised in state court is found to be procedurally defaulted because of a failure to comply with the state's procedural rules, it is exhausted and procedurally defaulted. The state courts do not review the merits of a procedurally defaulted claim.

The Sixth Circuit determined that Carpenter's ineffective assistance of counsel claim was meritorious and was sufficient "cause" to overcome his procedurally defaulted sufficiency of the evidence claim. *Carpenter*, 163 F.3d at 947. A finding of constitutionally ineffective assistance of counsel is a decision on the merits. Thus, the Sixth Circuit's review of the ineffective assistance of counsel claim circumvents the Ohio state court's finding of a procedural default.

The Sixth Circuit's decision resurrects Carpenter's ineffective assistance of counsel claim after that procedurally defaulted claim was dead and gone in state court. To further add insult to injury, the federal court has determined that Carpenter is entitled to relief unless the state court holds a new culpability hearing. *Carpenter*, 163 F.3d at 948. These actions exemplify the harm to the states when federal courts ignore state procedural rules. The "cause and prejudice" standard established in *Coleman* signifies far greater respect for state procedural rules and should be applied to a procedurally defaulted ineffective assistance of counsel claim before it can serve as "cause" for another procedurally defaulted claim.

Other lower courts have faced this double-default dilemna and recognized that principles of comity require a federal court to respect a state procedural default. In *Justus v. Murray*, 897 F.2d 709, 714 (CA4 1990), the Fourth Circuit held that *Wainwright* and *Harris* compel a "cause and prejudice" analysis before a procedurally defaulted ineffective assistance of counsel claim can serve as cause for another procedurally defaulted claim. *Id.* at 713. The court of appeals explicitly stated:

> "[C]laims of ineffective assistance of counsel, like other constitutional claims, may be precluded from federal habeas review if they have been rejected in state court on the adequate and independent state ground of a violation of a state procedural rule." *Id.* at 712 (citations omitted).

Moreover, the court recognized that to review the merits

of a procedurally defaulted ineffective assistance of counsel claim would bypass the state procedural bar. *Id.* at 713. The court recognized that such a result does not square with the principles of finality, comity, and judicial efficiency that underlie this Court's procedural default jurisprudence. *Id.*

Similarly, in *Hill v. Jones*, 81 F.3d 1015, 1030 (CA11 1996), *cert. denied*, 519 U.S. 1119 (1997), the Eleventh Circuit flatly rejected petitioner's argument that *Murray* allows an ineffective assistance of counsel claim to serve as "cause" whenever the claim is exhausted as an independent claim regardless of whether it is also procedurally defaulted. *Id.* at 1029. The court concluded that *Murray* and "the rest of the Supreme Court's jurisprudence on procedural default dictate that procedurally defaulted claims of ineffective assistance cannot serve as cause to excuse a default of a second claim." *Id.* at 1030. "Instead, [*Murray*] requires a claim of ineffective assistance be both exhausted and not defaulted in state court before it can be asserted as cause." *Id.* at 1031.

In juxtaposition to the Sixth Circuit's decision, these cases show a proper understanding of the Court's exhaustion and procedural default jurisprudence and proper deference to longstanding principles of finality, comity, and judicial economy. Because the state pays a

high price[3] when a federal court reviews a claim that is barred by the state courts, the Court should not let the Sixth Circuit's decision stand. The reasoning employed by the lower court is fundamentally flawed and will undermine a long history of respect for the states' procedural rules.

CONCLUSION

For these reasons, *Amici* respectfully submit that the court of appeals's decision should be reversed.

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3. As the Court stated in *Coleman*:

"[M]ost of the price paid for federal review of state prisoner claims is paid by the State. When a federal habeas court considers the federal claims of a prisoner in state custody for independent and adequate state law reasons, it is the State that must respond. It is the State that pays the price in terms of the uncertainty and delay added to the enforcement of its criminal laws. It is the State that must retry the petitioner if the federal courts reverse his conviction." 501 U.S. at 738-39.

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